

109TH CONGRESS  
2D SESSION

# H. R. 5637

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## AN ACT

To streamline the regulation of nonadmitted insurance and  
reinsurance, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2   *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Nonadmitted and Reinsurance Reform Act of 2006”.

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Effective date.

TITLE I—NONADMITTED INSURANCE

Sec. 101. Reporting, payment, and allocation of premium taxes.

Sec. 102. Regulation of nonadmitted insurance by insured’s home State.

Sec. 103. Participation in national producer database.

Sec. 104. Uniform standards for surplus lines eligibility.

Sec. 105. Streamlined application for commercial purchasers.

Sec. 106. GAO study of nonadmitted insurance market.

Sec. 107. Definitions.

TITLE II—REINSURANCE

Sec. 201. Regulation of credit for reinsurance and reinsurance agreements.

Sec. 202. Regulation of reinsurer solvency.

Sec. 203. Definitions.

TITLE III—RULE OF CONSTRUCTION

Sec. 301. Rule of Construction.

6 **SEC. 2. EFFECTIVE DATE.**

7 Except as otherwise specifically provided in this Act,  
8 this Act shall take effect upon the expiration of the 12-  
9 month period beginning on the date of the enactment of  
10 this Act.

# **TITLE I—NONADMITTED INSURANCE**

## **SEC. 101. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.**

(a) HOME STATE’S EXCLUSIVE AUTHORITY.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) ALLOCATION OF NONADMITTED PREMIUM TAXES.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured’s home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this Act, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium

1           taxes that, on or after January 1 of the first  
2           calendar year that begins after the expiration of  
3           such 330-day period, are required to be paid to  
4           any State that is subject to such compact or  
5           procedures.

6           (3) REPORT.—Upon the expiration of the 330-  
7           day period referred to in paragraph (2), the NAIC  
8           may submit a report to the Committee on Financial  
9           Services and Committee on the Judiciary of the  
10          House of Representatives and the Committee on  
11          Banking, Housing, and Urban Affairs of the Senate  
12          identifying and describing any compact or other pro-  
13          cedures for allocation among the States of premium  
14          taxes that have been adopted during such period by  
15          any States.

16          (4) NATIONWIDE SYSTEM.—The Congress in-  
17          tends that each State adopt a nationwide or uniform  
18          procedure, such as an interstate compact, that pro-  
19          vides for the reporting, payment, collection, and allo-  
20          cation of premium taxes for nonadmitted insurance  
21          consistent with this section.

22          (c) ALLOCATION BASED ON TAX ALLOCATION RE-  
23          PORT.—To facilitate the payment of premium taxes  
24          among the States, an insured's home State may require  
25          surplus lines brokers and insureds who have independently

1 procured insurance to annually file tax allocation reports  
2 with the insured's home State detailing the portion of the  
3 nonadmitted insurance policy premium or premiums at-  
4 tributable to properties, risks or exposures located in each  
5 State. The filing of a nonadmitted insurance tax allocation  
6 report and the payment of tax may be made by a person  
7 authorized by the insured to act as its agent.

8 **SEC. 102. REGULATION OF NONADMITTED INSURANCE BY**  
9 **INSURED'S HOME STATE.**

10 (a) HOME STATE AUTHORITY.—Except as otherwise  
11 provided in this section, the placement of nonadmitted in-  
12 surance shall be subject to the statutory and regulatory  
13 requirements solely of the insured's home State.

14 (b) BROKER LICENSING.—No State other than an in-  
15 sured's home State may require a surplus lines broker to  
16 be licensed in order to sell, solicit, or negotiate non-  
17 admitted insurance with respect to such insured.

18 (c) ENFORCEMENT PROVISION.—Any law, regula-  
19 tion, provision, or action of any State that applies or pur-  
20 ports to apply to nonadmitted insurance sold to, solicited  
21 by, or negotiated with an insured whose home State is an-  
22 other State shall be preempted with respect to such appli-  
23 cation.

24 (d) WORKERS' COMPENSATION EXCEPTION.—This  
25 section may not be construed to preempt any State law,

1 rule, or regulation that restricts the placement of workers'  
 2 compensation insurance or excess insurance for self-fund-  
 3 ed workers' compensation plans with a nonadmitted in-  
 4 surer.

5 **SEC. 103. PARTICIPATION IN NATIONAL PRODUCER DATA-**  
 6 **BASE.**

7 After the expiration of the 2-year period beginning  
 8 on the date of the enactment of this Act, a State may  
 9 not collect any fees relating to licensing of an individual  
 10 or entity as a surplus lines broker in the State unless the  
 11 State has in effect at such time laws or regulations that  
 12 provide for participation by the State in the national in-  
 13 surance producer database of the NAIC, or any other  
 14 equivalent uniform national database, for the licensure of  
 15 surplus lines brokers and the renewal of such licenses.

16 **SEC. 104. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**  
 17 **GIBILITY.**

18 A State may not—

19 (1) impose eligibility requirements on, or other-  
 20 wise establish eligibility criteria for, nonadmitted in-  
 21 surers domiciled in a United States jurisdiction, ex-  
 22 cept in conformance with section 5A(2) and  
 23 5C(2)(a) of the Non-Admitted Insurance Model Act;  
 24 and

1           (2) prohibit a surplus lines broker from placing  
2       nonadmitted insurance with, or procuring non-  
3       admitted insurance from, a nonadmitted insurer  
4       domiciled outside the United States that is listed on  
5       the Quarterly Listing of Alien Insurers maintained  
6       by the International Insurers Department of the  
7       NAIC.

8   **SEC. 105. STREAMLINED APPLICATION FOR COMMERCIAL**  
9                   **PURCHASERS.**

10       A surplus lines broker seeking to procure or place  
11   nonadmitted insurance in a State for an exempt commer-  
12   cial purchaser shall not be required to satisfy any State  
13   requirement to make a due diligence search to determine  
14   whether the full amount or type of insurance sought by  
15   such exempt commercial purchaser can be obtained from  
16   admitted insurers if—

17           (1) the broker procuring or placing the surplus  
18       lines insurance has disclosed to the exempt commer-  
19       cial purchaser that such insurance may or may not  
20       be available from the admitted market that may pro-  
21       vide greater protection with more regulatory over-  
22       sight; and

23           (2) the exempt commercial purchaser has sub-  
24       sequently requested in writing the broker to procure  
25       or place such insurance from a nonadmitted insurer.

1 **SEC. 106. GAO STUDY OF NONADMITTED INSURANCE MAR-**  
2 **KET.**

3 (a) IN GENERAL.—The Comptroller General of the  
4 United States shall conduct a study of the nonadmitted  
5 insurance market to determine the effect of the enactment  
6 of this title on the size and market share of the non-  
7 admitted insurance market for providing coverage typi-  
8 cally provided by the admitted insurance market.

9 (b) CONTENTS.—The study shall determine and ana-  
10 lyze—

11 (1) the change in the size and market share of  
12 the nonadmitted insurance market and in the num-  
13 ber of insurance companies and insurance holding  
14 companies providing such business in the 18-month  
15 period that begins upon the effective date of this  
16 Act;

17 (2) the extent to which insurance coverage typi-  
18 cally provided by the admitted insurance market has  
19 shifted to the nonadmitted insurance market;

20 (3) the consequences of any change in the size  
21 and market share of the nonadmitted insurance  
22 market, including differences in the price and avail-  
23 ability of coverage available in both the admitted  
24 and nonadmitted insurance markets;

25 (4) the extent to which insurance companies  
26 and insurance holding companies that provide both

1 admitted and nonadmitted insurance have experi-  
2 enced shifts in the volume of business between ad-  
3 mitted and nonadmitted insurance; and

4 (5) the extent to which there has been a change  
5 in the number of individuals who have nonadmitted  
6 insurance policies, the type of coverage provided  
7 under such policies, and whether such coverage is  
8 available in the admitted insurance market.

9 (c) CONSULTATION WITH NAIC.—In conducting the  
10 study under this section, the Comptroller General shall  
11 consult with the NAIC.

12 (d) REPORT.—The Comptroller General shall com-  
13 plete the study under this section and submit a report to  
14 the Committee on Financial Services of the House of Rep-  
15 resentatives and the Committee on Banking, Housing, and  
16 Urban Affairs of the Senate regarding the findings of the  
17 study not later than 30 months after the effective date  
18 of this Act.

19 **SEC. 107. DEFINITIONS.**

20 For purposes of this title, the following definitions  
21 shall apply:

22 (1) ADMITTED INSURER.—The term “admitted  
23 insurer” means, with respect to a State, an insurer  
24 licensed to engage in the business of insurance in  
25 such State.

1           (2) EXEMPT COMMERCIAL PURCHASER.—The  
2       term “exempt commercial purchaser” means any  
3       person purchasing commercial insurance that meets  
4       the following requirements:

5           (A) The person employs or retains a quali-  
6       fied risk manager to negotiate insurance cov-  
7       erage.

8           (B) The person has paid aggregate nation-  
9       wide commercial property and casualty insur-  
10      ance premiums in excess of \$100,000 in the im-  
11      mediately preceding 12 months.

12          (C) The person meets at least one of the  
13      following criteria:

14           (i) The person possesses a net worth  
15      in excess of \$20,000,000.

16           (ii) The person generates annual reve-  
17      nues in excess of \$50,000,000.

18           (iii) The person employs more than  
19      500 full time or full time equivalent em-  
20      ployees per individual insured or is a mem-  
21      ber of affiliated group employing more  
22      than 1,000 employees in the aggregate.

23           (iv) The person is a not-for-profit or-  
24      ganization or public entity generating an-

1                   nual budgeted expenditures of at least  
2                   \$30,000,000.

3                   (v) The person is a municipality with  
4                   a population in excess of 50,000 persons.

5                   (3) HOME STATE.—The term “home State”  
6                   means the State in which an insured maintains its  
7                   principal place of business or, in the case of an indi-  
8                   vidual, the individual’s principal residence.

9                   (4) INDEPENDENTLY PROCURED INSURANCE.—  
10                  The term “independently procured insurance”  
11                  means insurance procured directly by an insured  
12                  from a nonadmitted insurer.

13                  (5) NAIC.—The term “NAIC” means the Na-  
14                  tional Association of Insurance Commissioners or  
15                  any successor entity.

16                  (6) NONADMITTED INSURANCE.—The term  
17                  “nonadmitted insurance” means any property and  
18                  casualty insurance permitted to be placed directly or  
19                  through a surplus lines broker with a nonadmitted  
20                  insurer eligible to accept such insurance.

21                  (7) NON-ADMITTED INSURANCE MODEL ACT.—  
22                  The term “Non-Admitted Insurance Model Act”  
23                  means the provisions of the Non-Admitted Insurance  
24                  Model Act, as adopted by the NAIC on August 3,

1 1994, and amended on September 30, 1996, Decem-  
2 ber 6, 1997, October 2, 1999, and June 8, 2002.

3 (8) NONADMITTED INSURER.—The term “non-  
4 admitted insurer” means, with respect to a State, an  
5 insurer not licensed to engage in the business of in-  
6 surance in such State.

7 (9) QUALIFIED RISK MANAGER.—The term  
8 “qualified risk manager” means, with respect to a  
9 policyholder of commercial insurance, a person who  
10 meets all of the following requirements:

11 (A) The person is an employee of, or third  
12 party consultant retained by, the commercial  
13 policyholder.

14 (B) The person provides skilled services in  
15 loss prevention, loss reduction, or risk and in-  
16 surance coverage analysis, and purchase of in-  
17 surance.

18 (C) The person possesses at least two of  
19 the following credentials:

20 (i) An advanced degree in risk man-  
21 agement issued by an accredited college or  
22 university.

23 (ii) At least 5 years of experience in  
24 one or more of the following areas of com-

1 commercial property insurance or commercial  
2 casualty insurance:

3 (I) Risk financing.

4 (II) Claims administration.

5 (III) Loss prevention.

6 (IV) Risk and insurance coverage  
7 analysis.

8 (iii) At least one of the following des-  
9 ignations:

10 (I) A designation as a Chartered  
11 Property and Casualty Underwriter  
12 (in this clause referred to as  
13 “CPCU”) issued by the American In-  
14 stitute for CPCU/Insurance Institute  
15 of America.

16 (II) A designation as an Asso-  
17 ciate in Risk Management (ARM)  
18 issued by American Institute for  
19 CPCU/Insurance Institute of America.

20 (III) A designation as a Certified  
21 Risk Manager (CRM) issued by the  
22 National Alliance for Insurance Edu-  
23 cation & Research.

1 (IV) A designation as a RIMS  
2 Fellow (RF) issued by the Global Risk  
3 Management Institute.

4 (V) Any other designation, cer-  
5 tification, or license determined by a  
6 State insurance commissioner or other  
7 State insurance regulatory official or  
8 entity to demonstrate minimum com-  
9 petency in risk management.

10 (10) PREMIUM TAX.—The term “premium tax”  
11 means, with respect to surplus lines or independently  
12 procured insurance coverage, any tax, fee, assess-  
13 ment, or other charge imposed by a State on an in-  
14 sured based on any payment made as consideration  
15 for an insurance contract for such insurance, includ-  
16 ing premium deposits, assessments, registration fees,  
17 and any other compensation given in consideration  
18 for a contract of insurance.

19 (11) SURPLUS LINES BROKER.—The term “sur-  
20 plus lines broker” means an individual, firm, or cor-  
21 poration which is licensed in a State to sell, solicit,  
22 or negotiate insurance on properties, risks, or expo-  
23 sures located or to be performed in a State with  
24 nonadmitted insurers.

1           (12) STATE.—The term “State” includes any  
2       State of the United States, the District of Columbia,  
3       the Commonwealth of Puerto Rico, Guam, the  
4       Northern Mariana Islands, the Virgin Islands, and  
5       American Samoa.

## 6           **TITLE II—REINSURANCE**

### 7       **SEC. 201. REGULATION OF CREDIT FOR REINSURANCE AND** 8           **REINSURANCE AGREEMENTS.**

9           (a) CREDIT FOR REINSURANCE.—If the State of  
10      domicile of a ceding insurer is an NAIC-accredited State,  
11      or has financial solvency requirements substantially simi-  
12      lar to the requirements necessary for NAIC accreditation,  
13      and recognizes credit for reinsurance for the insurer’s  
14      ceded risk, then no other State may deny such credit for  
15      reinsurance.

16          (b)           ADDITIONAL           PREEMPTION           OF  
17      EXTRATERRITORIAL APPLICATION OF STATE LAW.—In  
18      addition to the application of subsection (a), all laws, regu-  
19      lations, provisions, or other actions of a State other than  
20      those of the State of domicile of the ceding insurer are  
21      preempted to the extent that they—

22           (1) restrict or eliminate the rights of the ceding  
23      insurer or the assuming insurer to resolve disputes  
24      pursuant to contractual arbitration to the extent

1 such contractual provision is not inconsistent with  
2 the provisions of title 9, United States Code;

3 (2) require that a certain State's law shall gov-  
4 ern the reinsurance contract, disputes arising from  
5 the reinsurance contract, or requirements of the re-  
6 insurance contract;

7 (3) attempt to enforce a reinsurance contract  
8 on terms different than those set forth in the rein-  
9 surance contract, to the extent that the terms are  
10 not inconsistent with this title; or

11 (4) otherwise apply the laws of the State to re-  
12 insurance agreements of ceding insurers not domi-  
13 ciled in that State.

14 **SEC. 202. REGULATION OF REINSURER SOLVENCY.**

15 (a) DOMICILIARY STATE REGULATION.—If the State  
16 of domicile of a reinsurer is an NAIC-accredited State or  
17 has financial solvency requirements substantially similar  
18 to the requirements necessary for NAIC accreditation,  
19 such State shall be solely responsible for regulating the  
20 financial solvency of the reinsurer.

21 (b) NONDOMICILIARY STATES.—

22 (1) LIMITATION ON FINANCIAL INFORMATION  
23 REQUIREMENTS.—If the State of domicile of a rein-  
24 surer is an NAIC-accredited State or has financial  
25 solvency requirements substantially similar to the re-

1        requirements necessary for NAIC accreditation, no  
2        other State may require the reinsurer to provide any  
3        additional financial information other than the infor-  
4        mation the reinsurer is required to file with its  
5        domiciliary State.

6            (2) RECEIPT OF INFORMATION.—No provision  
7        of this section shall be construed as preventing or  
8        prohibiting a State that is not the State of domicile  
9        of a reinsurer from receiving a copy of any financial  
10       statement filed with its domiciliary State.

11 **SEC. 203. DEFINITIONS.**

12        For purposes of this title, the following definitions  
13 shall apply:

14            (1) CEDING INSURER.—The term “ceding in-  
15        surer” means an insurer that purchases reinsurance.

16            (2) DOMICILIARY STATE.—The terms “State of  
17        domicile” and “domiciliary State” means, with re-  
18        spect to an insurer or reinsurer, the State in which  
19        the insurer or reinsurer is incorporated or entered  
20        through, and licensed.

21            (3) REINSURANCE.—The term “reinsurance”  
22        means the assumption by an insurer of all or part  
23        of a risk undertaken originally by another insurer.

24            (4) REINSURER.—

1 (A) IN GENERAL.—The term “reinsurer”  
 2 means an insurer to the extent that the in-  
 3 surer—

4 (i) is principally engaged in the busi-  
 5 ness of reinsurance;

6 (ii) does not conduct significant  
 7 amounts of direct insurance as a percent-  
 8 age of its net premiums; and

9 (iii) is not engaged in an ongoing  
 10 basis in the business of soliciting direct in-  
 11 surance.

12 (B) DETERMINATION.—A determination of  
 13 whether an insurer is a reinsurer shall be made  
 14 under the laws of the State of domicile in ac-  
 15 cordance with this paragraph.

16 (5) STATE.—The term “State” includes any  
 17 State of the United States, the District of Columbia,  
 18 the Commonwealth of Puerto Rico, Guam, the  
 19 Northern Mariana Islands, the Virgin Islands, and  
 20 American Samoa.

## 21 **TITLE III—RULE OF** 22 **CONSTRUCTION**

### 23 **SEC. 301. RULE OF CONSTRUCTION.**

24 Nothing in this Act or amendments to this Act shall  
 25 be construed to modify, impair, or supersede the applica-

1 tion of the antitrust laws. Any implied or actual conflict  
2 between this Act and any amendments to this Act and  
3 the antitrust laws shall be resolved in favor of the oper-  
4 ation of the antitrust laws.

Passed the House of Representatives September 27,  
2006.

Attest:

*Clerk.*

109TH CONGRESS  
2D SESSION

**H. R. 5637**

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## **AN ACT**

To streamline the regulation of nonadmitted insurance and reinsurance, and for other purposes.